Ganeshmal vs. Legal Representatives of Tikama

SB Civil 1st Appeal No.101/1988

Date of Order: 19th March, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Jitendra Chopra] for the appellant/s.
Mr. Manoj Bohra]

Mr.P.P.Choudhary for the respondent/s.

This first appeal is filed by the appellant-plaintiff against the respondent-defendants against the judgment and decree dated 25.05.88 passed by the learned Additional District Judge, Barmer whereby the civil original suit No.26/1986 filed by the appellant-plaintiff was dismissed.

The facts of the case giving rise to the filing of the suit are that the appellant-plaintiff filed a civil suit against respondent-defendant on the premises that an amount of Rs.11,400/- were due against defendant, which he failed to make payment because of his poor financial condition and in lieu of that he agreed to execute a sale

agreement for sale of his agricultural land bearing khasra No.162 measuring 108 bighas and 9 bishwas for Rs.12,000/- and accordingly an agreement was executed on 01.09.1985 by the defendant in favour of the appellant-plaintiff and remaining amount of Rs.600/- would be paid to the plaintiff at the time of registration.

The plaintiff further averred that the defendant agreed to execute sale deed and get it registered within a period of 15 days but defendant failed to comply the terms of the agreement and did not get the sale deed executed and registered, in favour of the plaintiff etc.

The respondent-defendant filed a written statement and denied the claim of the plaintiff and also denied the allegations with regard to the so called agreement. It was specifically further averred by the defendants that neither any agreement was ever executed by him in favour of the plaintiff, nor any such agreement was made. The plaintiff never gave any notice to the respondent -defendant with regard to so-called agreement. The amount of Rs. 11,400/- as debt was also denied and it was alleged that the plaintiff, by using false tactics , wanted to grab the land of the defendant. On these premises the respondent-defendants prayed for dismissal of the suit.

On the basis of the pleadings the learned trial court framed the following issues :-

> "1.क्या वादीगण के प्रतिवादी टीकमा व उसके लड़के नगाराम में 11,400 रूपये बकाया रहे थे जिनको प्रतिवादी टीकमा व नगाराम के पास चुकाने का कोई साधन न होने के कारण उन्होंने अपनी खातेदारी का खेत वर्णित पैरा 2 वादपत्र 12,000 रूपये में बैचना तय कर इकरारनामा निष्पादित कराया और 600 रूपये लेकर 15 दिन में बैचान पंजीकृत कराना तय किया।
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> 2- क्या प्रतिवाद ने इकरारनामें के अनुसार बयनामा पंजीकृत नहीं कराया और वादीगण हमेशा अनुबन्ध की पालना करने को तैयार थे।"

The learned trial court , thereafter, recorded evidence on behalf of the parties. In support of his claim, plaintiff Ganeshmal recorded his statement as PW/1 and also produced Madan as PW/2, who were cross-examined by the defendant. Certain documentary evidence were also exhibited. The defendant Tikma Ram also recorded his statement in defence as DW/1 and also produced Narsingha as DW/2, Mangal Singh as DW/3, who were cross-examined by the plaintiff.

That the learned trail court , after hearing both the

parties and after perusal of the material before it, came to the conclusion that the plaintiff has failed to establish that any agreement was executed to his favour by the defendant for a consideration of Rs.12,000/- and it was also held by the learned trial court that the supportive witnesses who were the witnesses to the agreement execution, were not produced during the trial so there was nothing on record to believe that the defendant agreed to sale his agricultural land in question to the plaintiff for the aforesaid consideration. It was also observed by the learned trial court that the plaintiff has not given any kind of notice to the defendant before filing the suit. On the basis of the aforesaid findings, the learned trial court dismissed the suit of the plaintiff with cost.

The appellant- plaintiff, aggrieved by the aforesaid judgment and decree, filed the instant appeal and challenged the same on various grounds, taking the plea that the learned trial court has not appreciated the material available on record. It was further stated by the appellant-plaintiff that the learned trail court has not relied upon the statement of plaintiff witness and so also on the agreement which was on record. The learned trial court also misread the material depositions made by the plaintiff's witness wherein it was specifically stated that the agreement was executed by the defendant

for sale of the agricultural land in question, for a consideration of Rs.12,000/-. Thus taking various pleas, the appellant prayed for decree in the suit to his favour.

I have heard learned counsel for the parties and have given my thoughtful consideration.

It is settled law that in the matters of suits for specific performance of the contract the provisions of the Specific Relief Act, 1963 are required to be adhered. Section 14, 16 & 20 of the Specific Relief Act, 1963 are of paramount importance . Merely because one party comes to the court and claims for performance of the part of the contract, on the ground that other party is not agreed for the same, is not sufficient to grant the decree of specific performance. The plaintiff is required to prove that there was a valid agreement between the parties and that the plaintiff in furtherance to the agreement, has performed the part of agreement and is further willing and ready for compliance of the terms and conditions of the agreement and that the defendant is not ready and willing to perform his part of the contract.

In the matters of the specific performance of the contract, the courts do not grant a decree of specific performance to the

plaintiff merely because there was some kind of agreement between the parties. It is settled law that it is the discretionary powers of the court to grant the decree of specific performance.

The plaintiff has tried to justify that the defendant has agreed to sale 108 bigha of land to the plaintiff for a meager amount of Rs.12,000/- and in furtherance to which, an agreement was also executed, which has been specifically denied by the defendant. In such situation, the plaintiff was required to lead cogent evidence to establish the fact that the defendant has executed such agreement for a given consideration, with full conscious and after weighing the future consequences.

Admittedly, it is the case of the plaintiff that his agreement was executed towards outstanding debt of Rs.11,400/-. The plaintiff has failed to prove that this amount was due against the defendant on the date of the execution of the agreement. The plaintiff also did not produce those material witnesses, who were the testator of the execution of the agreement in question, if any such agreement was ever made in the presence of those witnesses, who has either drafted the agreement, or were the witnesses to the execution of the agreement.

The learned trial court has given clear and reasoned finding with respect to the so called agreement which was not executed by the defendant, rather the same was prepared by the plaintiff and was placed on record. In this regard it is important to note that plaintiff has produced no evidence to establish that the defendant was ever put to notice to execute the sale deed or any written notice was ever issued in that regard.

The learned trial court has dealt every issue in the light of the evidence led by the parties and has given a just and reasoned findings which do not require any interference of this Court. When the consideration related to the old dealings, record or accounts of the same could have been produced by the plaintiff, but no such evidence has been adduced.

After examining the entire records and the material available on record, I have come to the conclusion that the appellant-plaintiff has no case to his favour and the appeal filed against the judgment and decree of the learned trial court lacks merit, as such the same is liable to be dismissed.

In view of the aforesaid findings, I do not find any ground to interfere in the judgment and decree passed by the learned trial court , hence this appeal is dismissed. However, with no costs.

(BHAGWATI PRASAD), J.

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